IN THE BOMBAY HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.527 OF 2003

Shri.R.C.Goenka. ... Petitioner.

vs.

M/s.Tender Investment Pvt. Ltd. ... Respondent.

Mr.Rishabh Shah i/b. Prasad Das, for Petitioner.

Mr.Naresh Pandya with A.A.Purohit i/b. H.K.Sudhakara & Tushna Thapliyal, for Respondent.

Mr.P.N.Mody with Sagar, Director of Bombay Stock Exchange.

CORAM: D.K.DESHMUKH,J.

DATED: 26th April, 2005.

P.C.:-

1. By this petition, the petitioner challenges the Award made by the Sole Arbitrator on 24.5.2003. By that Award, the claim made by the petitioner

has been dismissed. The admitted position is that the transactions between the parties to which the claim relates, are of the years 1991-92 and 1992-93. The transactions admittedly were on Bombay Stock Exchange. Admittedly, when the transaction took place, in the bye-laws framed by the Bombay Stock Exchange there was no period of limitation prescribed for referring the dispute to arbitration. It is also an admitted position that the amendment was made in the bye-laws on 29.8.1998 prescribing the period of limitation. It is also an admitted position that in the instant case, reference was filed on 29.5.2002. The Arbitrator has held that though no period of limitation was prescribed, when the cause of action accrued to the petitioner in the years 1991-92 and 1992-93 because bye-laws were amended in the year 1998 making the provision of the Limitation Act applicable, the period of limitation would be three years from the date of amendment and therefore, the dispute should have been referred to within a period of three years from the amendment in the bye-laws i.e. 29.8.1998 and as the reference has been made in May,2002, it is barred by the Law of Limitation and therefore, the claim has been rejected.

2. The learned Counsel for the petitioner relying on the judgement of the learned Single Judge of this Court in the case “R.C.Goyenka Vs. M/s.Chase Trading Co. and another; 2002(1) Mh.L.J. 774” states that the amendment in the bye-laws of the Bombay Stock Exchange which came into force in the year 1998 for the first time prescribing the period of limitation, does not have retrospective effect and therefore, there is no period of limitation

provided for making reference in relation to the claim, the cause of action for which arose before August,1998. The learned Counsel further relying on the judgement of the Learned Single Judge of this Court in the case "Smt.Ashalata S. Lahoti V. Hiralal Lilladhar, 1999(1) Bom.C.R. 293, submits that even principle of latches cannot be read into the Bye-laws.

3. On the other hand, the learned Counsel for the Respondent relies on the judgement of the Supreme Court in the case "Sayed Yousuf Yar Khan and others Vs. Sayed Mohammed Yar Khan and others.; AIR 1967 Supreme Court 1318 and submits that normally the Law of Limitation applicable to the suit is the Law in force on the date of institution of the suit and therefore, according to the learned Counsel in the year 2002 when the reference was made by the petitioner, there was provision in the bye-laws laying down the period of limitation, therefore, the reference would be governed by that provision. I have also heard the learned Counsel for Stock Exchange. He has invited my attention to two judgements of the Supreme Court, one in the case of "Olympus Superstructures Pvt. Ltd. V. Meena Vijay Khetan and others, AIR 1999 Supreme Court 2102" and another in the case of "Rajasthan State Mines and Minerals Ltd. Vs. Eastern Engineering Enterprises and another, (1999) 9 Supreme Court Cases 283.". Perusal of the Award shows that the Arbitrator has held that though when the cause of action accrued to the petitioner in the year 1992, there was no provisions in the bye-laws of the Stock Exchange laying down the period of limitation, because in the year 1998 the period of

limitation was laid down, the petitioner will have to make the reference within a period of three years from August,1998.

4. In my opinion, for making the period of limitation applicable in relation to the causes of action which are already accrued before the amendment came into force, a specific provision will be required to be made in the bye-laws. In the absence of specific provisions in the bye-laws, the period of limitation cannot be made applicable to the causes of action which are already accrued. Therefore, to that extent, in my opinion, the arbitrator is wrong. However, perusal of the Award shows that the Arbitrator has rejected the claim made by the petitioner also on the ground that it would be unreasonable and unjust to adjudicate upon the claim because the petitioner made the reference after undue delay and has taken unreasonably long time. The question therefore, firstly arises whether the Arbitrator is entitled to decline the relief because the Arbitrator finds that it is unjust to grant relief to a claimant, though in Law he may have made out his claim. In other words, is the grant of relief to a claimant in the discretion of the arbitrator ? The Supreme Court in its judgement in the case “Olympus Superstructures Pvt.Ltd. Vs. Meena Vijay Khetan and others, AIR 1999 Supreme Court 2102” has clearly taken a view that the arbitrator also has discretionary powers when the statutory provisions under which the arbitrator is operating, confers jurisdiction on the adjudicating authority. In my opinion, following observations from the judgement of the Supreme Court in the case “Olympus Superstructures Pvt.Ltd.

Vs. Meena Vijay Khetan and others, AIR 1999 Supreme Court 2102" are relevant which reads as under:-

> "36. Further, as pointed in the Calcutta case, merely because there is need for exercise of discretion in case of specific performance, it cannot be said that only the Civil Court can exercise such a discretion. In the above case, Ms.Ruma Pal, J. observed:
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> "..... merely because the sections of the Specific Relief Act confer discretion on Courts to grant specific performance of a contract does not mean that parties cannot agree that the discretion will be exercised by forum of their choice. If the converse were true, then whenever a relief is dependent upon the exercise of discretion of a Court by statute e.g. The grant of interest or costs, parties should be precluded from referring the dispute to arbitration."
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> We agree with this reasoning. We hold on Point 3 that disputes relating to specific performance of a contract can be referred to arbitration and S.34(2)(b)(i) is not attracted. We overrule the view of the Delhi High Court. Point 3 is decided in favour of respondents."

It thus, appears that grant of relief is in the discretion of the Arbitrator. It goes

without saying that this discretion has to be exercised in accordance with the law and the discretion cannot be exercised in the manner which results in breach of any Law or contrary to the settled principles of Law. In my opinion, therefore, if there is no period of limitation prescribed, the party is under an obligation to approach the arbitral forum within a reasonable time, so that it does not cause undue prejudice to the interest of the other side. Therefore, in my opinion, as there is no period of limitation prescribed, the party concerned when it approaches the arbitrator, will be liable to explain to the learned Arbitrator as to why the reference is being made at that stage. So far as this aspect of matter is concerned, in paragraph 9 of the Statement of claim the petitioner has stated that though the transactions were of year 1992-93, on 2nd August,1994 there was a fire in his office, as a result thereof his record was destroyed and he took some time to gather the record. Even if the allegations in paragraph 9 are taken at their face value, it cannot be said that the petitioner required 8 years from August,1994 to collect the relevant record. I find that the Arbitrator was justified in observing that the petitioner has approached the Arbitrator with unreasonable delay. In my opinion, adjudicating the claims which are of such stale nature will not be in the interest of justice unless there is a proper explanation given for the delay. Taking overall view of the matter therefore, in my opinion, it would not be in the interest of justice to disturb the Award made by the learned Arbitrator though I do find that the reasons that have been given by the learned Arbitrator may not be strictly correct. In the result, therefore, the petition fails and is

dismissed. There shall be no order as to costs.